

or fully collateralized with U.S. Government obligations. All cash of the HFIL revolving fund must be deposited in a separate bank account or accounts so as not to be commingled with other financial assets of the intermediary lender. All money deposited in such bank account or accounts must be security assets of the HFIL revolving fund. Loans to ultimate recipients must be from the HFIL revolving fund.

(1) The portion of the HFIL revolving fund that consists of Agency HFIL loan funds may only be used for making loans in accordance with § 769.105. The portion of the HFIL revolving fund that consists of repayments from ultimate recipients may be used for debt service, reasonable administrative costs, or for making additional loans;

(2) An intermediary lender may use revolving funds and HFIL loan funds to make loans to ultimate recipients without obtaining prior Agency concurrence in accordance with the Intermediary Relending Agreement;

(3) Any funds in the HFIL revolving fund from any source that is not needed for debt service, approved administrative costs, or reasonable reserves must be available for additional loans to ultimate recipients;

(4) All reserves and other funds in the HFIL revolving loan fund not immediately needed for loans to ultimate recipients or other authorized uses must be deposited in accounts in banks or other financial institutions. Such accounts must be fully covered by Federal deposit insurance or fully collateralized with U.S. Government obligations, and will be interest bearing. Any interest earned thereon remains a part of the HFIL revolving fund;

(5) If an intermediary lender receives more than one HFIL loan, it does not need to establish and maintain a separate HFIL revolving loan fund for each loan; it may combine them and maintain only one HFIL revolving fund, unless the Agency requires separate HFIL revolving funds because there are significant differences in the loan purposes, Intermediary Relending Agreement, loan agreements, or requirements for the loans; and

(6) A reasonable amount of revolved funds must be used to create a reserve

for bad debts. Reserves should be accumulated over a period of years. The total amount should not exceed maximum expected losses, considering the quality of the intermediary lender's portfolio of loans. Unless the intermediary lender provides loss and delinquency records that, in the opinion of the Agency, justifies different amounts, a reserve for bad debts of 6 percent of outstanding loans must be accumulated over 5 years and then maintained.

(b) *Loan monitoring reviews.* The intermediary lender must complete loan monitoring reviews, including annual and periodic reviews, and performance monitoring.

(1) At least annually, the intermediary lender must provide the Agency documents for the purpose of reviewing the financial status of the intermediary Lender, assessing the progress of utilizing loan funds, and identifying any potential problems or concerns. Non-regulated intermediary lenders must furnish audited financial statements at least annually.

(2) At any time the Agency determines it is necessary, the intermediary lender must allow the Agency or its representative to review the operations and financial condition of the intermediary lender. Upon the Agency requests, the Intermediary must submit financial or other information within 14 days unless the data requested is not available within that time frame.

(c) *Progress reports.* Each intermediary lender will be monitored by the Agency based on progress reports submitted by the intermediary lender, audit findings, disbursement transactions, visitations, and other contact with the intermediary lender as necessary.

§ 769.122 Loan servicing.

(a) *Payments.* Payments will be made to the Agency as specified in loan agreements and debt instruments. The funds from any extra payments will be applied entirely to loan principal.

(b) *Restructuring.* The Agency may restructure the intermediary lender's loan debt, if:

(1) The Government's interest will be protected;

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(2) The restructuring will be performed within the Agency's budget authority; and

(3) The loan objectives cannot be met unless the HFIL loan is restructured.

(c) *Default.* In the event of monetary or non-monetary default, the Agency will take all appropriate actions to protect its interest, including, but not limited to, declaring the debt fully due and payable and may proceed to enforce its rights under the loan agreement or any other loan instruments relating to the loan under applicable law and regulations, and commencement of legal action to protect the Agency's interest. The Agency will work with the intermediary lender to correct any default, subject to the requirements of paragraph (b) of this section. Violation of any agreement with the Agency or failure to comply with reporting or other program requirements will be considered non-monetary default.

§ 769.123 Transfer and assumption.

(a) All transfers and assumptions must be approved in advance in writing by the Agency. The assuming entity must meet all eligibility criteria for the HFIL Loan Program.

(b) Available transfer and assumption options to eligible intermediary lenders include the following:

(1) The total indebtedness may be transferred to another eligible intermediary lender on the same terms; or

(2) The total indebtedness may be transferred to another eligible intermediary lender on different terms not to exceed the term for which an initial loan can be made. The assuming entity must meet all eligibility criteria for the HFIL Loan Program.

(c) The transferor must prepare the transfer document for the Agency review prior to the transfer and assumption.

(d) The transferee must provide the Agency with information required in the application as specified in § 769.109.

(e) The Agency prepared assumption agreement will contain the Agency case number of the transferor and transferee.

(f) The transferee must complete an application as specified in § 769.109(a).

(g) When the transferee makes a cash down-payment in connection with the

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transfer and assumption, any proceeds received by the transferor will be credited on the transferor's loan debt in order of maturity date.

(h) The Administrator or designee will approve or decline all transfers and assumptions.

§ 769.124 Appeals.

Any appealable adverse decision made by the Agency may be appealed upon written request of the intermediary as specified in 7 CFR part 11.

§ 769.125 Exceptions.

The Agency may grant an exception to any of the requirements of this part if the proposed change is in the best financial interest of the Government and not inconsistent with the authorizing law or any other applicable law.

PART 770—INDIAN TRIBAL LAND ACQUISITION LOANS

Sec.

- 770.1 Purpose.
- 770.2 Abbreviations and definitions.
- 770.3 Eligibility requirements.
- 770.4 Authorized loan uses.
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- 770.6 Rates and terms.
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- 770.8 Use of acquired land.
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- 770.10 Servicing.

AUTHORITY: 5 U.S.C. 301, 25 U.S.C. 488.

SOURCE: 66 FR 1567, Jan. 9, 2001, unless otherwise noted.

§ 770.1 Purpose.

This part contains the Agency's policies and procedures for making and servicing loans to assist a Native American tribe or tribal corporation with the acquisition of land interests within the tribal reservation or Alaskan community.

§ 770.2 Abbreviations and definitions.

(a) *Abbreviations.*

FSA Farm Service Agency, an Agency of the United States Department of Agriculture, including its personnel and any successor Agency.

ITLAP Indian Tribal Land Acquisition Program.

USPAP Uniform Standards of Professional Appraisal Practice.